23

SUPREME COURT OF THE UNITED STATES.

No. ~~218.~~ 726.36

THE GOULD & CURRY SILVER MINING COMPANY, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF NEVADA.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEVADA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 213.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the Territory of Nevada, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court before you, between the people of the United States and Territory of Nevada, plaintiff, and the Gould & Curry Silver Mining Company, defendants, wherein a judgment was rendered for said plaintiff on the 3d day of May, A. D. 1864, for the sum of six thousand eight hundred and twenty dollars and forty-seven cents and costs, a manifest error hath happened, to the great damage of the said Gould & Curry Silver Mining Company, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are

1½ hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct the error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 12th day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

ALFRED HELM, *Clerk.*

Filed May 13, 1864.

ALFRED HELM, *Clerk.*

2 United States of America to the people of the United States and Territory of Nevada, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Nevada Territory, wherein the Gould & Curry Mining Company is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness the Honorable J. W. North, one of the justices of the said supreme court of Nevada Territory, this thirteenth day of May, in the year of our Lord 1864.

J. W. NORTH,
Associate Justice of Sup. Court, Nevada Territory.

I hereby admit and acknowledge due and proper service by copy of the within and foregoing citation, at Virginia City, Storey County, Nevada Territory, this 1st day of June, 1864.

D. CORSON,
Attorney for the said Defendants in error.

3 TERRITORY OF NEVADA, *County of Storey, ss:*

William S. Wood, being duly sworn, deposes and says that he is a white male citizen of the United States, over the age of twenty-one years, and has

no interest in the event of the suit named in the annexed petition; that on the first day of June, 1864, he personally served the annexed citation, by delivering a true copy thereof to Dighton Corson, esq., attorney for said defendants in error, at Virginia City, county and Territory aforesaid, and that said Dighton Corson thereupon, in presence of affiants, signed the admission of service endorsed upon the said citation.

W. S. WOOD.

Subscribed and sworn to before me this 1st day of June, A. D. 1864.

ALFRED HELM, *Clerk.*

4 Pleas before the Honorable J. W. North, judge of the district court of the first judicial district, Territory of Nevada, (of which district the county of Storey forms a part,) on the 22d day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Complaint.

District court, 1st jud'l district.

UNITED STATES OF AMERICA, *Territory of Nevada, County of Storey:*

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF NEVADA
vs.
THE GOULD & CURRY MINNING COMPANY.

The people of the United States and Territory of Nevada, by Dighton Corson, prosecuting attorney of the county of Storey, complain of Gould & Curry Mining Company, Virginia City, a corporation duly organized under and by virtue of the laws of California, and for cause of action say that between the first Monday of May and the first Monday of November, A. D. 1863, in the county of Storey, in the Territory of Nevada, Lloyd Frizell, then and there being the assessor of said county, did duly assess and put down on an assessment roll all the property, real and personal in said county subject to taxation, and did duly ascertain, as required by law, the names of all persons, corporations, and companies owning and working any mine or mines within the said county of Storey, and did duly list all such names in a separate part of the assessment roll, as required by law, and did duly
5 assess the gross proceeds from each and all such mines, as required by law. The said assessment roll was afterwards duly submitted to the board of equalization of said county, and was by said board duly equalized, as required by law.

The said Gould & Curry Mining Company was then and there the owners of, and engaged in working, that certain mine of gold and silver bearing quartz rock, situated in Virginia City, in the county of Storey and Territory of Nevada, known as the Gould & Curry mine, and that the said assessor did duly assess, as required by law, the receipts and gross proceeds obtained from the mines of said defendant hereinbefore mentioned as follows:

For the three months ending May 1st, 1863, as amounting in value to the sum of five hundred and thirty-eight thousand four hundred and twenty-six dollars and thirty-six cents, ($538,426 36,) and for the three months ending August 1, 1863, as amounting in value to the sum of seven hundred and sixty-four thousand one hundred and ninety-eight dollars and sixty-one cents, ($764,198 61,) making a total of gross receipts and proceeds from said mine of the value of two million sixty-six thousand eight hundred and twenty-three dollars and fifty-eight cents, ($2,066,823 58.)

That there was duly levied upon each one hundred dollars' value of the receipts and gross proceeds from the mine aforesaid for the fiscal year commencing on the first Monday of May, A. D. 1863, a territorial and a county

tax of thirty cents, amounting to the sum of six thousand two hun-
6 dred dollars and forty-seven cents, ($6,200 47,) all of which sum is now due and unpaid.

Wherefore said plaintiffs demand judgment against said defendant for the sum of six thousand and two hundred dollars and forty-seven cents, ($6,200 47,) and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes and of this action, with ten per cent. additional, as provided by law.

D. CORSON,
Prosecuting Attorney of the County of Storey, Territory of Nevada.

Endorsed: Filed this 2d day of March, A. D. 1864.
G. A. KING, *Clerk*,
By B. H. HEREFORD, *D. C.*

And on the 2d day of March, A. D. 1864, came the plaintiff, by their prosecuting attorney, and sued out their summons against the defendants herein, which is in the words and figures following, to wit:

Summons.

In the district court of the first judicial district, in the Territory of Nevada, in and for the county of Storey.

The people of the United States in the Territory of Nevada send to Gould & Curry Mining Company:

You are hereby required to appear in an action commenced against you, as defendant, by the people, &c., as plaintiff, in the district court of the first judicial district, Territory of Nevada, at Virginia, and an-
7 swer to the complaint therein, which is on file with the clerk of said court, within ten days after the service on you of this summons (exclusive of the day of service) if served in said county, or twenty days if served out of said county but within said district, and in all other cases forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to recover the sum of six thousand two hundred dollars and forty-seven cents claimed to be due from said defendant for territorial and county tax for the fiscal year commencing on the first Monday of May, A. D. 1863, and costs of suit, the same being the tax of 30 cents on each one hundred dollars of the gross proceeds and receipts of the mine known as the Gould & Curry. And you are further notified that if you fail to appear and answer the said complaint, the said plaintiff will take judgment for the said sum and interest, besides cost.

In witness whereof, I, George A. King, have hereunto set my hand and affixed the seal of said court this second day of March, A. D. 1864.

[SEAL.]

G. A. KING,
Clerk of the Dist. Court of the First Jud'l Dist.,
By B. H. HEREFORD, *D. C.*

Which summons is endorsed as follows, to wit:

Return on summons.

I hereby certify that I received the within summons on the 2d day of March, A. D. 1864; and I further certify that on the 31st day of March,
8 1864, I served the same on John O. Earl, business manager of the Gould & Curry Mining Company, defendants within named, at Virginia City, in Storey County.

J. W. EASTERLING, *Tax Col.*,
By R. H. CORNELL, *Dep'ty.*

Demurrer.

And afterward, to wit, on the 22d day of April, A. D. 1864, came the defendant, by its attorneys, Crittenden & Sunderland and Stewart & Baldwin, and file their demurrer herein as follows, to wit:

District court of the first judicial district, in and for Storey County, Nevada Territory.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, plaintiff,
vs.
THE GOULD & CURRY MINING COMPANY, defendant.

The defendant demurs to the complaint in the above-entitled action, on the ground that it does not state facts sufficient to constitute a cause of action.

CRITTENDEN & SUNDERLAND,
STEWART & BALDWIN,
Att'ys for Defendant.

9 *Stipulation to submit case.*

It is agreed that the foregoing demurrer shall be considered as sufficient to present for the decision of the court the question whether the act of the legislature of Nevada Territory approved December 20, 1862, entitled "An act to amend and supplemental to an act to provide for the assessing and collecting county and territorial revenue," so far as it provides for the assessment and collection of a tax on the gross receipts and proceeds of mines and mining claims, can be enforced, or whether the same is in conflict with any of the provisions of the act of Congress approved March 2d, 1861, entitled "An act to organize the Territory of Nevada," it being admitted by the plaintiff, for the purposes of this demurrer, and to be considered as stated in the complaint, that the Gould & Curry mine mentioned in the complaint is on the public land of the United States, and that the defendant has no title thereto from the United States, and no other or better right to the possession thereof than location and occupation under the mining rules, regulations, and customs adopted and recognized by the miners of the district. And it is further agreed that if judgment be rendered upon the demurrer in favor of the plaintiff, the defendant may immediately appeal therefrom to the supreme court of the Territory without giving any undertaking whatever on appeal; that the appeal shall be considered as perfected upon the filing and service of notice thereof, and that the defendant may put the
10 case upon the calendar of the supreme court immediately and bring it to a hearing at the present April term of the court.

Dated April 21st, 1864.

DIGHTON CORSON,
Pros. Att'y, Storey County.
CRITTENDEN & SUNDERLAND,
STEWART & BALDWIN,
Att'ys for Def't.

Order overruling the demurrer.

The following entry appears on the minute book of said court:

FRIDAY, *April 22d*, 1864.

On motion for counsel for plaintiff, the demurrer herein is overruled, and defendant not asking leave to answer, judgment is ordered to be entered for plaintiff as prayed for in plaintiff's complaint.

Afterward, to wit, on the 22d day of April, A. D. 1864, the following judgment was rendered herein:

Judgment.

District court, first judicial district.

TERRITORY OF NEVADA, *County of Storey:*

THE PEOPLE OF THE UNITED STATES IN THE TERRITORY of Nevada,
vs.
11 THE GOULD & CURRY MINING COMPANY.

This cause coming on for argument on the demurrer filed herein, and the court having overruled the same and ordered judgment to be entered in accordance with the stipulation on file herein, now, therefore, the court does order and adjudge that plaintiff do have and recover of the said defendant the sum of six thousand two hundred and 47-100 dollars, the same being the original tax levied on the gross proceeds of defendant's mine, together with ten per cent. on said amount, delinquency, amounting to the sum of six hundred and twenty dollars, making a total of six thousand eight hundred and twenty 47-100 dollars, and the costs of this suit, taxed at six hundred and fifty-eight 75-100 dollars, and that execution issue therefor.

Dated Virginia, N. T., April 22d, 1864.

Done in open court.

By the court : J. W. NORTH, *Judge 1st District.*

12 Afterwards, to wit, on the 22nd day of April, A. D. 1864, came the defendant, by its attorneys, Messrs. Crittenden & Sunderland and Stewart & Baldwin, and filed its notice of appeal in the words and figures following, to wit:

Notice of appeal.

District court of the first judicial dist., in and for Storey County, Nevada Territory.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, plaintiff,
vs.
THE GOULD & CURRY MINING COMPANY, defendant.

You will take notice that the defendant in the above-entitled suit hereby appeals to the supreme court of Nevada Territory from the order overruling demurrer of defendant to plaintiff's complaint and the judgment made and entered therein on the 22d day of April, A. D. 1864.

CRITTENDEN & SUNDERLAND,
STEWART & BALDWIN,
Att'ys for Def't.

To DIGHTON CORSON, Esq., *Pros. Att'y, Storey County.*

Indorsed: Due service admitted April 22d, 1864.

D. CORSON, *Pros. Att'y.*

13 Afterward, to wit, on the 22d day of April, A. D. 1864, came the plaintiff, by its prosecuting attorney, and filed its stipulation in the words and figures following, to wit:

Stipulation.

District court of the 1st judicial district, in and for Storey County, Nevada Territory.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada
vs.
THE GOULD & CURRY MINING CO.

It was intended by the stipulation in this case, dated April 21st, 1864, and it is understood and agreed that the filing of notice of appeal by the defendant from the judgment this day entered, shall have the effect to stay proceedings on the judgment pending the appeal in like manner as if the proper undertaking on appeal for that purpose had been filed.

April 22d, 1864.

D. CORSON, *Pros. Attorney.*

14 *Certificate of clerk.*

TERRITORY OF NEVADA, *County of Storey, ss:*

I, George A. King, clerk of the district court in and for the first judicial district, county and Territory aforesaid, do certify the above and foregoing to be a full, true, and complete transcript of the pleadings, judgment, and proceedings, and of the orders and stipulations in the above-entitled cause on file and of record in my office.

Witness George A. King, clerk, and the seal of said court at Virginia, this 23d day of April, A. D. 1864.

[L. S.]

GEORGE A. KING, *Clk*,
By SAM'L OSBOURNE, *Deputy.*

15 *Decision of the sup. court.*

Judgment of the supreme court of Nev. Ter., April session, A. D. 1864.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, respondent,
vs.
THE GOULD & CURRY G. AND S. M. Co., appellant.

This cause came up on appeal from the district court of the first judicial district, in and for the county of Storey.

This cause came on to be heard in open court, and appellants and respondent each being heard, by their respective counsel, and said cause being submitted and taken under advisement by the court, and all and singular the law and the premises fully considered, now on this day the opinion of the court is rendered by Turner, C. J., full bench concurring, to the effect that the judgment of the court below is affirmed.

Whereupon it is now ordered, adjudged, and decreed by the court that the judgment of the court of said 1st judicial district, in and for the county of Storey, be, and the same is hereby, affirmed.

Judgment rendered May 3d, 1864.

16 *Bond on writ of error.*

Supreme Court of the United States.

THE GOULD & CURRY MINING COMPANY, plaintiffs in error,
vs.
THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, defendants in error.

Know all men by these presents that we, the Gould & Curry Mining Com-

pany, as principal, and A. Meyer and Alfred E. Davis as sureties, are held and firmly bound unto the above-named people of the United States and Territory of Nevada in the sum of fourteen thousand nine hundred and fifty-eight 44-100 dollars, ($14,958 44-100,) to be paid to the said people of the United States and Territory of Nevada, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this twelfth day of May, A. D. 1864.

Whereas the above-named Gould & Curry Mining Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Nevada Territory, now, therefore, the condition of this obligation is
17 such that if the above-named Gould & Curry Mining Company shall prosecute its said writ of error to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

GOULD & CURRY SILVER MINING CO.,
By CHARLES BONNER, *Sup't.*
ALFRED E. DAVIS. [SEAL.]
A. MEYER. [SEAL.]

TERRITORY OF NEVADA, *County of Storey:*

A. Meyer and Alfred E. Davis, sureties on the foregoing undertaking, being duly sworn, each for himself deposes and says that he is a resident and freeholder within this Territory, and is worth the amount above specified over and above all his just debts and liabilities, exclusive of property exempt from execution.

ALFRED E. DAVIS.
A. MEYER.

Subscribed and sworn to before me this May 12th, 1864.
[L. S.] H. M. MORGAN,
Notary Public, Storey County, N. T.

Endorsed: Approved May 13, 1864.
J. W. NORTH, *Associate Justice S. C.*
Filed May 13th, 1864.
ALFRED HELM, *Clerk.*

18 TERRITORY OF NEVADA, *ss:*

I, Alfred Helm, clerk of the supreme court, Nevada Territory, do hereby certify the foregoing sixteen pages, numbered from one to sixteen, inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and of the papers and evidence on which said decision was founded, as the same appear of record in my office, in the case wherein the "Gould & Curry Mining Company" is appellant and "the People of the United States in the Territory of Nevada" is appellee.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be affixed this 24th day of July, A. D. 1864, and of our independence the 89th.

ALFRED HELM, *Clerk.*

Filed December 8, 1864.